

When persons sell tangible personal property which they are not otherwise engaged in the business of selling, such transactions may be occasional sales not subject to ROT. See 86 Ill. Adm. Code 130.110. (This is a GIL).

January 14, 2002

Dear Xxxxx:

This letter is in response to your letter dated October 2, 2001 and your subsequent email. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Questions have arisen as to the interpretation of the occasional sales provisions of Illinois sales and use tax law concerning the taxability of a bulk sale of assets by a division of a company. Some of the assets in question are of the same type, or of similar character, as those assets sometimes sold or leased at retail by the selling company. I would appreciate a formal ruling from you, with appropriate citations to the law, regulations, and rulings, concerning the fact situations presented below.

Facts:

AAA manufactures, sells, and services computer and printing equipment. AAA is registered to do business in Illinois, and collects and remits sales and use taxes to Illinois. BBB is a computer systems retailer with headquarters in Illinois. BBB is also registered to do business in Illinois, under a single registration number for all its divisions operating in Illinois. BBB proposes to sell off one of its major divisions to AAA. This division does not sell or lease computer equipment at retail, but sells such computer services as data storage and data backup and recovery. BBB has filed for Chapter 11 protection under the federal bankruptcy laws. As such, the Bankruptcy Court will need to approve this proposed sale.

Equipment used to provide BBB's storage or backup and recovery services is sometimes of the same type or character as the equipment sold or leased at retail by other divisions at BBB, but this equipment differs in its application from the equipment otherwise sold by BBB. For instance, BBB may sell/lease servers in its other divisions, but also may use servers to perform backup and storage services for customers in the division proposed to be purchased by AAA.

Sometimes the equipment subject to the proposed sale to AAA may fall under the same general category of 'computer equipment' as the equipment otherwise sold or leased by BBB, but may differ in its particulars from this equipment. For instance, BBB may sell/lease servers and storage devices in its other divisions, but may not sell personal computers and other devices of the type used to help perform the storage/backup functions in the division proposed to be purchased by AAA. In other words, the servers and personal computers may be of the same general character, (both are computer equipment), but each type of equipment has different functions.

Sometimes BBB may sell the same type of computer equipment in its other divisions that is used to perform administrative functions in the division proposed to be purchased by AAA. For instance, as in the example above concerning equipment used to perform services to customers, BBB may sell servers in the division not proposed for sale, and may use servers to perform normal internal functions as payroll, accounting, and marketing analysis in the division proposed to be purchased by AAA. These servers, as used in their respective divisions, have entirely different uses.

Sometimes the equipment used to perform various internal functions may fall under the same general category of computer equipment as the equipment otherwise sold or leased by other divisions of BBB, but may differ in its particulars from this equipment. For example, BBB may sell/lease servers and storage devices in its other divisions, but may not sell personal computers and other devices used to help perform the various internal functions necessary to the running of the company.

#### Questions:

Please comment on the taxability of each category of equipment discussed above.

- 1) In the context of a bulk sale, is the equipment proposed to be sold by one division of BBB, which is of the exact same type as the equipment sold/leased by other divisions of BBB, exempt under the occasional sales provisions of Illinois law where the equipment, subject to the bulk sale, is used to perform computer services for customers? (servers vs. servers)
- 2) In the context of a bulk sale, is equipment sold by one division of BBB, which is of the same general character, but not of the same type, as the equipment sold/leased by other divisions of BBB, exempt under the occasional sales provisions of Illinois law where the equipment subject to the bulk sale is used to perform computer services for customers? (servers vs. personal computers)
- 3) In the context of a bulk sale, is equipment sold by one division of BBB, which is of the exact same type as the equipment sold/leased by other divisions of BBB, exempt under the occasional sales provisions of Illinois law where the equipment, subject to the bulk sale, is used to perform various internal administrative functions? (servers vs. servers)
- 4) In the context of a bulk sale, is equipment sold by one division of BBB, which is of the same general character, but not of the same exact type, as equipment sold/leased by other divisions of BBB, exempt under the occasional sales provisions of Illinois law where the equipment subject to the bulk sale is used to

perform various internal administrative functions? (servers vs. personal computers)

Please send your response to: NAME/ADDRESS

If you have any questions regarding this letter, please feel free to give me a call. Thank you in advance for your prompt attention to this request.

We cannot issue a binding determination in the context of a General Information Letter. Because of the nature of your question, you may wish to consider obtaining a Private Letter Ruling from our office. See the last sentence of this letter that cites the regulation that sets out the requirements for obtaining a Private Letter Ruling.

Based upon the following authority as applied to the information set out in your letter, it appears all categories of sales in your four questions would probably be taxable.

The Retailers' Occupation Tax Act imposes a tax upon persons who are engaged in the occupation of selling tangible personal property at retail. See 35 ILCS 120/1 et seq. Please be advised that as a general proposition, the occasional sale exemption is available when a person purchases an item and then, after using the item, disposes of it by selling it. Please refer to 86 Ill. Adm. Code 130.110. See also Section 1 of the ROT Act where it states in part as follows:

"The isolated or occasional sale of tangible personal property at retail by a person **who does not hold himself out as being engaged** (or who does not habitually engage) **in selling such tangible personal property at retail** . . . does not constitute engaging in a business of selling such tangible personal property at retail within the meaning of this Act. (emphasis added)"

This means that for a sale to qualify as occasional, an entity must not be in the business of selling the same type of tangible personal property. If a seller of computers and servers decides to sell computers or servers that it has used internally, such sales would not qualify as occasional sales because the entity is in the business of selling computers and servers. This is true even if the equipment does not have the same memory or storage capacity or does not perform exactly identical functions as the items normally sold.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk

Enc.